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1 order “may be modified *only* for good cause and with the judge’s consent.” Rule 16(b)(4),
2 FED.R.CIV.P. (emphasis added). Consistent with Rule 16, at the September 28, 2009
3 scheduling conference and in its Rule 16 scheduling order, the Court informed *pro se*
4 Plaintiff and defense counsel that the Rule 16 deadlines are firm and the Court intended to
5 enforce the deadlines set forth in the scheduling order, citing, among other cases, *Janicki*
6 *Logging Co. v. Mateer*, 42 F.3d 561, 566 (9th Cir. 1994) (“[F]ederal Rule of Civil Procedure
7 16 is to be taken seriously. . .”). (docket # 25 at 2)

8 As discussed in *Johnson v. Mammoth Recreations, Inc.*, 975 F.2d 604, 609 (9th
9 Cir. 1992), “the Rule 16 good cause standard primarily considers the diligence of the party
10 seeking amendment.” *Doe ex rel. Doe v. State of Hawaii Dept. of Educ.*, 351 F.Supp.2d 998,
11 1009 (D.Hawaii, 2004); *Hazelwood v. United States*, 2006 WL 1599344, * 7 (D.Ariz. 2006)
12 (“Plaintiff has presented no evidence she was diligent in seeking to amend her complaint.
13 Finding no good cause to modify the Scheduling Order, Plaintiff’s Motion to Amend is
14 untimely and will be denied.”); *Robert Half Intern. Inc. v. Murray*, 2008 WL 2610793, * 5
15 (E.D.Cal. 2008) (“The diligence of the party seeking the extension is an important factor.”).
16 Additionally, “[t]he district court may modify the pretrial schedule ‘if it cannot reasonably
17 be met despite the diligence of the party seeking the extension.’” *Johnson*, 975 F.2d at 609
18 (quoting the Fed.R.Civ.P. 16 advisory committee’s notes (1983 amendment)).

19 The Court finds that good cause exists to allow the filing of the Second
20 Amended Complaint even though the scheduling order’s December 24, 2009 deadline has
21 passed for filing a motion to amend pleadings. (docket # 25 at 3) The Court also finds that
22 Plaintiff exercised due diligence to find counsel to represent her when she finally realized she
23 needed representation and her new counsel promptly sought leave to amend the *pro se*
24 Amended Complaint. Further, the interests of justice, the absence of prejudice to Defendant,
25 the fact there is no trial date, and discovery does not end until August 20, 2010 dictate that
26 Plaintiff be permitted to file a Second Amended Complaint. *Eminence Capital, LLC v.*
27 *Aspeon, Inc.*, 316 F.3d 1048, 1052 (9th Cir. 2003) (consideration of prejudice to the opposing
28 party “carries the greatest weight.”); *Reliance Ins. Co. v. Louisiana Land and Exploration*

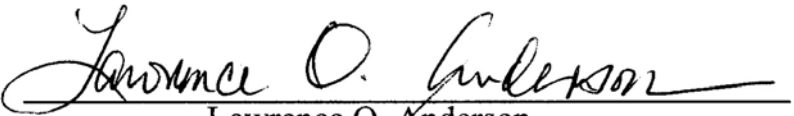
1 Co., 110 F.3d 253, 257-258 (5th Cir. 1997) (identifying factors for district courts to consider
2 in determining whether good cause exists to modify scheduling order). There will not,
3 however, be any further amendments to Plaintiff's pleadings.

4 Accordingly,

5 **IT IS ORDERED** that Plaintiff's request for leave to amend the Amended
6 Complaint, docket # 35 at 8-9, is **GRANTED**. Pursuant to LRCiv 15.1, as amended on
7 December 1, 2009, Plaintiff "must file and serve [the Second Amended Complaint, lodged
8 as docket # 44] on all parties under Rule 5 of the Federal Rules of Civil Procedure **within**
9 **fourteen (14) days** of the filing of the order granting leave to amend" LRCiv 15.1.
10 (emphasis added).

11 **IT IS ORDERED** that Defendant's Motions to Dismiss, docket # 29, is
12 **DENIED** as moot.

13 DATED this 31st day of January, 2010.

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18 Lawrence O. Anderson
United States Magistrate Judge
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